(2) On 17th February, 1950, the Applicant consulted Messrs. Maxwell, Kenion, Cowdy & Jones and on the same day Mr. Donnelly of the firm wrote to the Magistrate at Kampar requesting that the notes of evidence and Grounds of Judgment be sent.

(3) On 10th March, 1950, the notes of evidence and Grounds of Judgment were delivered at the office of Messrs. Maxwell, Kenion, Cowdy & Jones.

(4) Owing in part to an oversight in the solicitors' office, to the fact that a Sunday intervened, that one member of the firm was permanently absent on Anti-Bandit Month duties and that Mr. Donnelly was himself in Court on 10th March, the record from the Magistrate's Court was not dealt with until the 13th March, on which date the period within which the appeal could be brought expired.

On these facts I have to consider whether in accordance with Section 531 of Cap. 7 special circumstances exist which render an extension of time just.

I was referred very properly by Mr. Donnelly, for the Applicant, to the judgment of Willan, C.J., in *Manickam v. Tremelbye (Selangor) Rubber Co., Ltd.*[1]. In that case, although there was undue delay from the 5th to the 25th June by the District Court in complying with the provisions of Section 220, the Applicant's solicitors were informed by telephone, still within ample time for the appeal to be lodged, that the notes were ready. Owing to negligence in the solicitors' office no action was taken on the telephone message. The learned Chief Justice in exercising his discretion dismissed the application.

In the course of his judgment the learned Chief Justice stated :—

"It was the duty of the solicitors for the applicant to exercise reasonable diligence to ascertain from the District Court, either by personal visits, or by letter, or by telephone, within the time limited for bringing the appeal, whether the grounds of judgment were ready or when they were likely to be ready. They were not entitled, having merely written one letter asking for Grounds of Judgment and nothing more, to sit back and do nothing further to attempt to get them within the time limited for bringing the appeal."

In the present case it does not appear that the Applicant's solicitors made any enquiries or made any attempt to obtain the Grounds of Judgment within the time limited for bringing the appeal other than their original letter of 17th February, and in exercising my discretion on the circumstances of this particular application I do so following the ruling by Willan C.J. quoted above. Accordingly this application is dismissed with costs.

I desire, however, to make the following observations with regard to Section 220 of Cap. 7 as it seems very obvious that the real purport of the proviso to this section is not appreciated. The section reads as follows :—

"220. The judgments of Courts inferior to the Supreme Court need not contain more than the points for determination and the decision thereupon; provided that on the application of any party who is dissatisfied with any judgment of a Lower Civil Court within the time limited by Chapter XLV for appealing the Magistrate shall certify in writing the grounds of his judgment and deliver such certificate to the applicant."

It requires the Magistrate *on the application* of any dissatisfied party to certify in writing the grounds of his judgment and to deliver such certificate to the applicant. The words "within the time limited by Chapter XLV for appealing" relate to the application. If the application is out of time the Magistrate need do nothing, but if it is within the time limited by Chapter XLV it is the Magistrate's duty forthwith to comply with Section 220. He is not required to do something within the time limited for appealing, but to do it forthwith.

It follows that on receipt of an application steps should at once be taken to prepare the necessary documents and delivery should be effected with the utmost dispatch. There may well be rare occasions due to unusual circumstances when delivery is unavoidably delayed beyond a few days, but such occasions should be exceptional.

In this instance it took the Magistrate 21 days to deliver his Grounds of Judgment, etc. This was undue delay and a failure to comply with the provisions of Section 220. It was an entirely reasonable and proper request by the Applicant's solicitors to require delivery by post.

I feel that a proper appreciation by Presidents of Sessions Courts and by Magistrates of their duties under Section 220, as I have set out above, will do as much to obviate applications of this nature as will any display of diligence by solicitors.

Application dismissed.

LOO BENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) April 11, 1950]

[Ipoh — Criminal Appeal No. 8 of 1950]

Opium and Chandu Proclamation, s. 3 — Possession of chandu — Meaning of "occupier".

In this case the appellant had been convicted of possession of chandu, which was found in a room where

the appellant and three other persons were found when the premises were raided by Customs Officers. It appeared that the appellant either as an individual or as a member of a partnership paid the rent of the room in which the chandu was found, that he left a safe containing money in it and that he visited it from time to time for the purpose of transacting business.

Held, that the appellant was rightly found to be the occupier of the room and therefore he was rightly convicted of possession of the chandu under s. 3(2) of the Opium and Chandu Proclamation.

Cases referred to :—

(1) *Rex v. Carr-Briant* 29 Cr. App. R. 76.

(2) *Ong Eng Soo and two others v. Public Prosecutor* (1949) M.L.J. 231.

(3) *Choo Ah Tee v. Public Prosecutor* 1 F.M.S.L.R. 197.

CRIMINAL APPEAL from Sessions Court.

C. D. D. Hogan for the appellant.

E. N. Griffith-Jones for the respondent.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Thomson, J. : — The Appellant in this case and one Lee Chau were charged in the Sessions Court at Ipoh that they had in their possession a pipe containing chandu, 12 packets of chandu, 2 tins of chandu dross and a small tube of reprepared chandu dross in contravention of section 3(1) of the Opium and Chandu Proclamation. Lee Chau pleaded guilty and was convicted on his own plea. The Appellant claimed trial but he also was convicted and was sentenced to 4 months' simple imprisonment. Against that conviction and sentence he has now appealed.

For the Prosecution, the Senior Customs Officer, Ipoh, a Mr. Maciver, gave evidence to the effect that at 9.30 p.m. with other customs officers he proceeded to a shophouse in Hill Street, Ipoh. They entered a room under the staircase in which were four male Chinese including the two accused. The Appellant was lying on a wooden platform and beside him on the platform were a small lamp described as a chandu lamp which was not burning, and a pipe which on subsequent examination by the Government Chemist was found to contain a small quantity of chandu dross. Under a table were found 2 tins containing chandu dross and 12 packets of chandu, and on the table was a horn tube of chandu. Just outside the room in a stack of firewood 2 tins of chandu dross were found, but as these have no bearing on the case in any way and as the reference to them in the charge was deleted in the course of the trial they can be disregarded. In the room was a large steel safe and the Appellant was in possession of a key which opened this safe. Two other customs officers were tendered for cross-examination but the only evidence of any importance that was elicited from either of them was that in the room he saw some old newspapers which he described as 'scrappy and torn'.

The Appellant gave evidence on his own behalf. He denied all knowledge of the chandu that was found. He admitted that he kept the safe which was found in the room in question and said that at the time of the raid he had gone to the room to check the money which was kept in the safe for labourers' wages and to transact various bits of business connected with a mining undertaking in which he was interested. At the actual moment of the raid he was sitting on a bed talking to a friend and reading a newspaper to find out the price of tin ore. Lee Chau, who had already been convicted on his plea of guilty, said that all the chandu found on the premises was his, that no one else had any custody or control over it, and that the Appellant whom he did not know came to the room on the night in question, opened the safe, and had some conversation with the other occupant of the room. One Chow To said he was in the room when it was raided and had gone there to transact some mining business with the Appellant. He said that he did not see the chandu pipe which was found on the platform beside the Appellant.

The only question which arises on the appeal is whether or not the Appellant was an occupier of the premises on which the chandu was found within the meaning of section 3(2) of the Opium and Chandu Proclamation which reads as follows :—

"(2) Any opium or chandu which is found on any part of any premises, shall be deemed, unless the contrary be proved, to be in the possession of the occupier of such part of the premises."

It is, I think, admitted that the proof of the Appellant's guilt fell short of the standard of proof required in the ordinary way in criminal cases, but if he were an occupier within the meaning of the provision which has just been quoted it would be sufficient if the evidence satisfied the Court of the Appellant's guilt only to the extent that his innocence was not probable (see *Carr-Briant*[1]).

On the point of law involved, both sides prayed in aid the judgment of Storr J., in the case of *Ong Eng Soo and two others v. Public Prosecutor*[2]. That case has never been fully reported and the present is the second criminal appeal which has come before me within a matter of weeks in which there would appear to have been some misunderstanding as to its effect.

Accordingly, I find it necessary to say a few words about it. The facts in that case were that about 4 a.m. customs officers having broken down the locked front door of a house went to a room inside it. As they approached that room the Appellant came out of it and on entering it they found a number of other persons engaged in preparing chandu. On these facts the Appellant in that case was convicted. The learned President in the course of his judgment said that he considered all persons who were found in a room at a time when a raid is made to be occupiers for the purpose of section 3 (2) of the Proclamation and went on to hold that the Appellant had not discharged the onus thereby put upon him. The Appellant appealed and his main ground of appeal was that the learned President erred in law in the interpretation which he had given to the word "occupier".

At the hearing of the appeal it was argued for the Appellant that the word "occupier" in section 3 (2) meant a person who was in legal occupation of or lived in the premises in question. For the Respondent it was argued that all persons found in a room at the time when a raid is made are occupiers for the purpose of section 3 (2) and that as used in section 3 (2) the term occupier is sufficiently wide to include not only a tenant but also a licensee or even a trespasser. Having considered these submissions and having for reasons which he stated rejected as inapplicable the judgment of Innes, J.C., in the case of *Choo Ah Tee v. The Public Prosecutor*[3] where residence on premises and some exercise of control over them were held to be essential to occupation for the purposes of the Common Gaming Houses Enactment, His Lordship came to the following conclusion :—

"In section 3(2), however, the word "occupier" stands alone, and I am of opinion that in this particular sub-section of the Proclamation "occupier" must mean anyone who is found in any part of the premises from which other persons are excluded. I do not think it can be meant only to include persons who necessarily reside on the premises, or that part of the premises, or who have control in running the premises or that particular part of the premises. I therefore think in this case where the Appellants were discovered in a closed room in a closed house, out of which room the 1st Appellant emerged on the entrance of the Customs officials at 4.00 a.m., that they are rightly held by the learned President to be occupiers of that room, and that, therefore, as chandu was found in that room the presumption under section 3(2) arose as against them all."

In view of the way in which it came before the Court I do not think that *Ong Eng Soo's* case can be taken as deciding anything more than that physical presence on premises may amount to occupation of them for the purposes of section 3 (2) of the Proclamation and that on the facts of that particular case the physical presence of the Appellant on the premises did amount to occupation.

In the present case, however, the facts are different and, as against the present Appellant, very much stronger. On his own admissions, either as an individual or as a member of a partnership, he paid the rent of the room in which the chandu was found, he kept a safe containing money in it and he visited it from time to time for the purpose of transacting business. On these facts the learned President was, in my opinion, right in holding that the Appellant was an occupier of the room. Once that point was reached the chandu which was in fact found in the room was to be deemed to be in the possession of the Appellant and his conviction became inevitable unless he satisfied the Court that the balance of probability was against his having been in possession of it. I see nothing in the record to suggest that the learned President misdirected himself as to the nature or the weight of the burden that was thereby placed upon the Appellant and having read through the evidence with care I do not think that he could have arrived at any other conclusion than that it had not been discharged.

The appeal is accordingly dismissed.

I would add that though I have no doubts as to the correctness of my decision in this case it is the third time at least within a period of little over six months that the question of what is an occupier for the purposes of section 3 (2) of the Opium and Chandu Proclamation has been raised in criminal appeals in the State of Perak alone. In view of the pertinacity with which cases under this Proclamation are generally contested, I have no doubt it will continue to be raised in the future. In the circumstances, I am prepared, if I am asked to do so, to grant a certificate under section 34 of the Courts Ordinance to enable the point to be taken to the Court of Appeal.

Appeal dismissed.

SUPPIAH CHETTIAR v. PUNG SEK KHOON.

[Orig. Civ. Juris. (Thomson, J.) April 17, 1950]

[Ipoh — Civil Application No. 13 of 1950]

Japanese Judgments and Civil Proceedings Ordinance, 1946, s. 4 — Application for leave to carry on proceedings commenced before Japanese Court — Application out of time — Special circumstances.

This was an application for an extension of time to file an application for leave to carry on certain proceedings commenced before a Japanese Court. The application was made under s. 4 of the Japanese Judgments and Civil Proceedings Ordinance which provides that a party to any